

Before the
Federal Communications Commission
Washington, DC

RECEIVED

MAR 12 1999

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
)
Amendment of Section 202(b),)
Table of Allotments,) **RM-**
FM Broadcast Stations)
(West Rutland, VT))

To: Chief, Allocations Branch

PETITION FOR RULEMAKING

The Great Casco Bay Wireles Talking Machine Limited Liability Company ("Great Casco"), by its attorney, hereby requests that the Commission amend the Table of Allotments as follows:

<u>Community</u>	<u>Current</u>	<u>Proposed</u>
West Rutland, VT	298C3	298A

In support thereof, the following is stated:

By *Report and Order* adopted on October 12, 1990, 5 FCC Rcd 5886 (Policy and Rules 1990), Channel 292A at West Rutland, Vermont was upgraded from Channel 298A to Channel 298C3. This upgrade was subject, in part, to the following condition:

Within 90 days of the effective date of this Order, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

Id. at ¶ 4. The *Report and Order* became effective on November 26, 1990.

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MMB

That condition was never satisfied. An application¹ specifying operation on Channel 298C3 at West Rutland, Vermont, was not filed until August 5, 1991, following the dismissal of the permittee's underlying application (for a Class A modified construction permit), and the permittee's subsequent Class C3 amended application was later dismissed, as well, on December 11, 1991. See Attachment 1. The dismissal of that application became final on January 10, 1992. No new Class C3 application ever was filed by the permittee. The permittee's underlying Class A permit then was canceled on April 13, 1993. Attachment 2. The permittee subsequently attempted to downgrade its facility, and to commence operations once again as a Class A facility. Attachment 3. Program Test Authority to operate that Class A facility was denied. Attachment 4.

Great Casco is licensee of Station WTHT, Lewiston, Maine. The continued designation of Channel 292 at West Rutland as a Class C3 facility, despite that fact that plans to operate on the upgraded facility have apparently long since been abandoned, is preventing Station WTHT from upgrading to a full 100 kW facility. The downgrade of Channel 298C3 at West Rutland to a Class A allotment will be in full accord with the FCC's minimum separation requirements, and would be fully spaced with both the reference point of Channel 292C1, Lewiston, Maine, as well as Station WTHT's current licensed location, based upon the current West Rutland reference point *as well as* the current West Rutland Class A construction permit geographic coordinates.

Grant of this request would be in full accord with Commission policy. In *Hazelhurst, Utica and Vicksburg, MS*, 9 FCC Rcd 6439 (Allocations Branch 1994), a Station (WMDC-FM)

¹ In this case, in actuality an amendment to a pending application (File No. BMPH-891229ID) was filed. See Attachment 1.

requested and was granted authority to upgrade to a Class C3 allotment, but never filed a Form 301 for the upgrade. Consequently, the FCC sent a letter to the licensee of the station advising it that unless and FCC Form 301 was filed, it would be made a party to a rulemaking proceeding. No application was filed, and the Commission stated the licensee was "deemed to have abandoned its interest in the Class C3 allotment." *Id.* at ¶ 2. The allotment was downgraded back to a Class A allotment.

Similarly, in *Leavenworth, Othello and East Wenatchee, WA*, 10 FCC Rcd 983 (Allocation Branch, 1995), a licensee was granted an upgrade from Class C3 to Class C1 at Othello, Washington, that was never effectuated. There, too, an applicant was warned that it must file an FCC Form 301 or the channel would revert to its prior Class. There, too, no application was filed, and the Commission proposed the channel be downgraded back to a Class C3 allotment. *Id.* at ¶ 4.

In the present case, although the former permittee of the channel temporarily filed an application for the Class C3 facility, the application never was properly prosecuted, which resulted in the dismissal of the Class C3 application over seven years ago. No timely appeal of that application dismissal was filed with the Commission. Further, rather than ever refiling a *new* application for Class C3 facilities to replace the now-dismissed application, the permittee instead indicated his obvious changed intention, and filed an application requesting issuance of a license for a *Class A* license. Attachment 3.

In this instance, valuable spectrum is laying fallow by virtue of this uneffectuated channel upgrade at West Rutland. Upon favorable consideration of this request, Great Casco will be able to virtually immediately increase power, and thereby improve service to the public. Absolutely

no public interest justification appears to exist for maintaining the C3 allotment at this currently vacant, unapplied for location.

Accordingly, Great Casco respectfully requests that this Petition be adopted, that the Commission commence a rulemaking proceeding to consider amending the FM Table of Allotments to specify Channel 298A at West Rutland, Vermont, in lieu of Channel 298C3.

Respectfully submitted,

**GREAT CASCO BAY WIRELESS
TALKING MACHINE LIMITED
LIABILITY COMPANY**

By: 

Dan J. Alpert

Its Attorney

*The Law Office of Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201
(703) 243-8690*

March 12, 1999

ATTACHMENT 1

332N

FCC MAIL SECTION

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

11 DEC 1991

IN REPLY REFER TO:
8920-IR

Mr. Brian Dodge
WRUT, Inc.
P.O. Box 69
Dover, NH 03820

In re: WRUT(FM), West Rutland, VT
WRUT, Inc.
BMPH-891229ID

Dear Mr. Dodge:

This letter refers to (i) the above-captioned minor change application which proposes to increase the antenna height above average terrain (HAAT) and to decrease the effective radiated power (ERP), (ii) the Commission's letter dated April 26, 1991 requesting an amendment to upgrade to Class C3, (iii) the Commission's dismissal letter dated July 19, 1991, (iv) the amendment submitted on August 5, 1991 and (v) the Commission's letter dated August 13, 1991 reinstating the application nunc pro tunc and noting several discrepancies.

On April 26, 1991 the Commission notified you that the allotment for WRUT(FM) had become a Class C3 allotment on November 26, 1990 and requested that you submit an amendment to upgrade your proposal to a Class C3 facility. By letter dated July 19, 1991 your application was dismissed for failure to respond to the April 26, 1991 letter within the required thirty days. In response, you submitted a petition for reconsideration on August 5, 1991 requesting reinstatement of your application (BMPH-891229ID) and amending to a Class C3 station as requested in the Commission's April 26, 1991 letter. In your August 5, 1991 petition, you stated that the April 26, 1991 letter was sent to an incorrect address in West Rutland, Vermont. Therefore, you requested that the Commission accept the August 5, 1991 amendment as timely filed.

In a letter dated August 13, 1991, your petition for reconsideration was granted and your application was reinstated nunc pro tunc. The August 5, 1991 amendment was accepted for good cause. The August 13, 1991 letter also noted several discrepancies in your amended application. In short, the site elevation you listed in Item 7(a)(1) in Section V-B differs from the site elevation determined from the transmitter site map. In addition, you were informed that a waiver of 47 C.F.R. § 73.215 would be necessary to permit contour overlap processing since the proposal was filed for a Class C3 station, which was not then covered by that section of the Commission's Rules. Finally, the August 13, 1991 letter stated that you did not address the issue of potential occupational hazards caused by the proposed facility.

You were advised that failure to respond within thirty days of the date of the August 13, 1991 letter would result in the dismissal of the application pursuant to 47 C.F.R. 73.3568. As of the date of this letter, no response has been received by the Commission.

Accordingly, your application, file number BMPH-891229ID, IS HEREBY DISMISSED pursuant to 47 C.F.R. § 73.3568(b) for failure to prosecute. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

A handwritten signature in black ink that reads "Dennis Williams". The signature is written in a cursive style with a large, stylized "D" and "W".

Dennis Williams
Chief, FM Branch
Audio Services Division
Mass Media Bureau

ATTACHMENT 2

RECEIVED MAY 05 1993

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

13 APR 1993

IN REPLY REFER TO:
1800B3-MFW

Mr. Brian Dodge
P.O. Box 1840
Dover, NH 03820-1840

In re: WRUT(FM), West Rutland, VT
BPH-891229JP
BMPH-891229ID (previously dismissed)

Dear Mr. Dodge:

This letter responds to: (i) the above-referenced application to reinstate the expired permit of station WRUT(FM), West Rutland, Vermont, filed on December 29, 1989; and (ii) the "amendments" to an application to modify the existing WRUT construction permit, which application was dismissed on December 11, 1991.¹

By way of background, the WRUT permit (BPH-851209MK) was granted on June 13, 1988 and expired on December 13, 1989. On December 29, 1989, you filed both the instant extension request and the application to modify the WRUT permit by changing transmitter site, antenna height above average terrain, and effective radiated power.² In the reinstatement application, you indicated that Ms. Louella Austin, the owner of your proposed transmitter site, had leased the property to WCAX-TV, Burlington, Vermont for operation of a translator and that she would not permit any construction of WRUT there without WCAX-TV's approval. You state that WCAX has been unresponsive to your attempts to negotiate, so you began looking for alternative sites, finally securing a spot on an existing tower on Pico Mountain in Menden, Vermont. The concurrently filed modification application purportedly specified that site. Finally, you indicate that the reinstatement application was filed after the expiration of the WRUT permit because you, your broadcast engineer, and your secretary were stricken with the flu.

On April 26, 1991 the staff notified you that the allotment for WRUT had become a Class C3 allotment on November 26, 1990 and requested that you submit an amendment to upgrade your modification proposal to specify Class C3 facilities.

¹ Because the modification application has been dismissed, these amendments will be returned below.

² Additionally, in July of 1988 you filed an application File No. BALH-880729HS) to assign the WRUT permit to Bruce M. and Susan E. Lyons. This application was opposed by Caravelle Broadcast Group of Vermont, Inc. and ultimately was dismissed on April 25, 1989. In October of 1990, you filed a "short form" application to assign the WRUT permit to WRUT, Inc., a corporation which you control. While that application was granted on October 24, 1990, we have not received notice of consummation.

By letter dated July 19, 1991, your application was dismissed for failure to respond to the April 26 letter within the required 30 days. You then submitted a petition for reconsideration on August 5, 1991, requesting reinstatement because the staff's April 26 letter was sent to an incorrect address. You also requested therein that the Commission accept the proffered amendment as timely filed. By letter dated August 13, 1991, the staff granted your petition for reconsideration and reinstated the modification application nunc pro tunc; the letter also pointed out several discrepancies in the amended application and request that they be corrected within 30 days. No response was submitted, and on December 11, 1991, the modification application was again dismissed for failure to prosecute. Letter to Brian Dodge, reference 8920-LR (Chief, FM Branch, December 11, 1991).

The Commission expects rapid completion of construction and grants applications for extensions only when there is substantial evidence that concrete steps are being taken to complete construction promptly or that all possible steps have been taken to facilitate proceeding with construction. Current guidelines for determining whether an extension will be granted are embodied in the Commission's Memorandum Opinion and Order In re Amendment of Section 73.3598 and associated rules concerning the construction of broadcast stations, 102 FCC 2d 1054 (1985). Extensions will be granted only if one of the following criteria has been met:

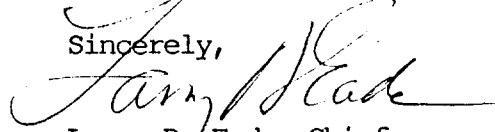
1. Construction is complete and program testing is underway looking toward prompt filing of a license application.
2. Substantial progress has been made i.e., demonstration that equipment is on order or on hand, site cleared, and construction proceeding toward completion.
3. No progress has been made for reasons clearly beyond the control of the permittee (such as delays caused by government budgetary processes and zoning problems) but the permittee has taken all possible steps to resolve the problem expeditiously and proceed with construction.

See also 47 C.F.R. § 73.3534(b).

You have not shown substantial evidence that concrete steps have been taken to complete construction, thus failing to meet either of the first two criteria for granting extensions. With regard to the third criterion, it is arguably beyond your control that the owner of your transmitter site decided to give your space to another party. However, you have failed to take "all possible steps to resolve the problem expeditiously and proceed with construction." 47 C.F.R. § 73.3534(b). Specifically, the fact that the modification application was dismissed twice for failure to prosecute indicates that you are not moving diligently to construct WRUT.

Accordingly, the application (File No. BPH-891229JP) to reinstate the expired construction permit of WRUT(FM), West Rutland, Vermont, IS DENIED, the underlying construction permit (BPH-891209MK) IS DECLARED FORFEITED AND CANCELLED, and the call letters WRUT ARE DELETED. Additionally, the January 29, 1993 amendments to the previously dismissed modification application BMPH-891229ID ARE RETURNED. These actions are taken pursuant to 47 C.F.R. §0.283.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Eads", written in dark ink.

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

ATTACHMENT 3

Approved by OMB
3060-0506
Expires 1/31/94

DUPPLICATE

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FCC 302-FM

CC/MELLON MAY 01 1995

FOR
FCC
USE
ONLY

APPLICATION FOR FM

BROADCAST STATION LICENSE

(Please read instructions before completing this form)

FOR MASS MEDIA BUREAU USE ONLY

FILE NO. BLH-950501KF

Section I - GENERAL INFORMATION

1. APPLICANT NAME

WRUT Inc

MAILING ADDRESS (Line 1) (Maximum 35 characters)

PO Box 69

MAILING ADDRESS (Line 2) (if required) (Maximum 35 characters)

CITY

Dover

STATE OR COUNTRY (if foreign address)

NH

ZIP CODE

03821

TELEPHONE NUMBER (include area code) -

603-742-8571

DALL LETTERS

WRUT

OTHER FCC IDENTIFIER (if applicable)

FOR MAILING THIS APPLICATION, SEE INSTRUCTIONS FOR SECTION 1

2. A. Is a fee submitted with this application?

☒ Yes ☐ No

B. If No, select the appropriate box to indicate reason for fee exemption (see 47 C.F.R. Section 1.1112) or reason a fee is not applicable and go to Question 3.

☐ Governmental Entity ☐ Noncommercial educational licensee ☐ Other (Please explain):

If item 2.A. is Yes, provide the following information:

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the "Mass Media Services Fee Filing Guide." Column (B) lists the Fee Multiple applicable for this application. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number listed in Column (B).

	(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
(1)	MHR	0 0 0 1	\$ 135.00	

To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

	(A)	(B)	(C)	FOR FCC USE ONLY
(2)		0 0 0 1	\$	

ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (2), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.

TOTAL AMOUNT REMITTED
WITH THIS APPLICATION

\$

FOR FCC USE ONLY

Section 1 - GENERAL INFORMATION (Page 2)

3. (a) Has an adverse finding been made or an adverse final action taken by any court or administrative body with respect to the applicant or parties to the application in a civil or criminal proceeding, brought under the provisions of any law related to the following: any felony; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

☒ Yes ☐ No

(b) Is there now pending in any court or administrative body any proceeding involving any of the matters referred to in (a) above?

☐ Yes ☒ No

If the answer to (a) and/or (b) above is Yes, attach as an Exhibit a full disclosure of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), a statement of the facts upon which the proceeding is or was based or the nature of the offense alleged or committed, and a description of the current status or disposition of the matter.

Exhibit No. 1

ON File with FCC

4. For permittees of commercial FM stations only:

permitter filed its Ownership Report (FCC Form 323) or ownership certification in accordance with 47 C.F.R. Section 73.3615(b)? See Instructions.

☒ Yes ☐ No
☐ Does Not Apply

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See 47 U.S.C. Section 304.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

CERTIFICATIONS

5. By checking Yes, the applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862, or, in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. Section 1.2002(b).

☒ Yes ☐ No

I declare that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Name of Applicant <i>WRUT, Inc.</i>	Signature <i>[Signature]</i>
Title <i>President</i>	Date <i>4-19-96</i>

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine whether grant of this application is in the public interest. In reaching that determination, or for law enforcement purposes, it may be necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, processing of the application may be delayed or the application may be returned without action pursuant to the Commission's rules. Your response is required to obtain the requested authority.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. SECTION 552a(e)(3).

SECTION II - TECHNICAL DATA

1. Select **one** for each item. This application is for a:

- (a) ☒ Request for program test authority
 (b) ☒ Commercial station
 (c) ☐ Directional antenna
- ☐ Station on automatic program test authority
☐ Noncommercial station
☒ Non-directional antenna

SPECIAL OPERATING CONDITIONS MAY PROHIBIT AUTOMATIC PROGRAM TEST AUTHORITY

2. Call Sign: WRIT 3. Frequency or channel: 298 Class: A

4. Community of License:

City <u>W Rutland</u>	State <u>Vt</u>
-----------------------	-----------------

5. Select **one** that applies and enter the file number(s) on the appropriate line(s). This application:

(a) ☐ covers a construction permit. Original file number: BPH 851209, 11K

as modified by: _____

as extended by: _____

as replaced by: BMPH 891229, 10

(b) ☐ modifies a license, file number: _____

6. Is this application being filed pursuant to MM Docket No. 88-375 (Class A Upgrade)? See instructions.

☐ Yes ☒ No

If Yes, attach the supplemental Exhibit to this application.

Exhibit No.

IF YOU SELECTED 5(b), "MODIFIES A LICENSE," PROCEED TO ITEM 8.

7. Expiration date of construction permit:

unknown

Month	Day	Year
-------	-----	------

THIS APPLICATION MUST BE ON FILE WITH THE COMMISSION BEFORE THE EXPIRATION DATE OF YOUR CONSTRUCTION PERMIT. SEE INSTRUCTIONS.

SECTION II - TECHNICAL DATA (Page 2)

8. Description of facilities authorized by the construction permit or license noted in Item 5(a) or 5(b).

(a) Antenna coordinates: 43° 34' 04" N. Lat. 73° 00' 30" W. Lon.

	Horizontal	Vertical
(b) Effective radiated power:	<u>300</u> kW	<u>300</u> kW
(c) Beam tilt effective radiated power (if applicable):	<u>—</u> kW	<u>—</u> kW
(d) Radiation center above ground:	<u>63</u> meters	<u>63</u> meters
(e) Radiation center above mean sea level:	<u>454</u> meters	<u>454</u> meters
(f) Antenna height above average terrain:	<u>100</u> meters	<u>100</u> meters
(g) Overall tower height above ground (including antenna, all other appurtenances, and lighting, if any):	<u>67</u> meters	

9. Description of facilities as constructed:

(a) Antenna coordinates: 43° 34' 04" N. Lat. 73° 00' 30" W. Lon.

	Horizontal	Vertical
(b) Effective radiated power:	<u>3</u> kW	<u>3</u> kW
(c) Beam tilt effective radiated power (if applicable):	<u>—</u> kW	<u>—</u> kW
(d) Radiation center above ground:	<u>35</u> meters	<u>35</u> meters
(e) Radiation center above mean sea level:	<u>426</u> meters	<u>426</u> meters
(f) Antenna height above average terrain:	<u>72</u> meters	<u>72</u> meters
(g) Overall tower height above ground (including antenna, all other appurtenances, and lighting, if any):	<u>40</u> meters	

10. Are there any differences between the facilities described in Item 8 and those in Item 9?

☒ Yes ☐ No

IF YES, YOU MAY NOT BE ABLE TO USE THIS FORM. SEE INSTRUCTIONS.

Attach an Exhibit explaining in detail how these differences occurred.

Exhibit No. 13

11. Attach an Exhibit that demonstrates compliance with the special operating conditions, terms, and obligations described in the construction permit.

Exhibit No.

☐ Does Not Apply

CONVERSION TO AND FROM METRIC:

METERS = 0.3048 X FEET

FEET = 3.281 X METERS

SECTION II - TECHNICAL DATA (Page 3)

12. Antenna description:

Make <i>Celwave</i>	Model Number <i>LP-3</i>	Number of Sections <i>3</i>	Power Gain <i>1.4</i>
------------------------	-----------------------------	--------------------------------	--------------------------

If the antenna utilizes beam tilt, null fill, reduced spacing (less than one wavelength) between bays or the antenna is directional or specialized, an Exhibit must be attached. SEE INSTRUCTIONS.

Exhibit No.

13. Transmission line system description:

(a) Transmission line:

Make <i>Cablewave</i>	Model Number <i>FLE-7550T</i>	Length in Meters <i>46</i> meters
--------------------------	----------------------------------	--------------------------------------

(b) Percent efficiency of entire transmission line system: *87* %

If any losses are included in 13(b) other than the loss of the transmission line listed in 13(a), attach an Exhibit detailing these additional losses. See Instructions.

Exhibit No.

14. Transmitter power output (in kilowatts): *2465* kW

SEE INSTRUCTIONS TO CALCULATE TPO.

15. Operating constants:

(a) D.C. plate current in last radio stage (amperes): *1.5* A

(b) Applied D.C. voltage in last radio stage (volts): *3000* V

(c) Efficiency of transmitter at operating power (percent): *55* %

(d) RF transmission line meter reading (percent): *49* %

SEE INSTRUCTIONS TO CHECK OPERATING CONSTANTS.

16. Is the main studio within the 3.16 mV/m (70 dBu) field strength contour of the main facility?

☒ Yes ☐ No

If NO, attach an Exhibit pursuant to the Instructions.

Exhibit No.

17. Location of Main Studio: (P.O. BOXES ARE UNACCEPTABLE)

Street Address or Location Description <i>42 Woodstock Ave</i>		
City <i>Rutland</i>	County <i>Rutland</i>	State <i>Vt</i>

CONVERSION TO AND FROM METRIC:

METERS = 0.3048 X FEET FEET = 3.281 X METERS

SECTION II - TECHNICAL DATA (Page 4)

18. Location(s) of Remote Control Point(s):

(a)

Street Address or Location Description <i>Broadman Hill</i>		
City <i>N. Clarendon</i>	County <i>Rutland</i>	State <i>Vt</i>

(b)

Street Address or Location Description <i>42 Woodstock Ave</i>		
City <i>Rutland</i>	County <i>Rutland</i>	State <i>Vt</i>

If there are additional remote control points, attach an Exhibit which describes their locations.

Exhibit No.

19. Location of Antenna Site:

Street Address or Location Description <i>Broadman Hill</i>		
City <i>N. Clarendon</i>	County <i>Rutland</i>	State <i>Vt</i>

20. CERTIFICATION OF PREPARER

I certify that I represent the applicant in the capacity indicated below and that I have examined the foregoing statement of technical information and that it is true to the best of my knowledge and belief.

Name (please print or type) <i>Brian Dodge</i>	Signature (check appropriate box below) <i>[Signature]</i>
Address (include ZIP Code) <i>P.O. Box 69 N. Clarendon, VT 05761</i>	Date <i>4-10-95</i>
	Telephone No. (include Area Code) <i>803-742-5575</i>

☐ Technical Director

☐ Registered Professional Engineer

☒ Chief Operator

☐ Technical Consultant

☐ Other (specify)

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PAPERWORK REDUCTION ACT

Public reporting burden for this collection of information is estimated to average 4 hours per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, can be sent to the Federal Communications Commission, Information Resources Branch, Room 110, Paperwork Reduction Project, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0180), Washington, D.C. 20503.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

EXHIBIT B

Due to environmental concerns and possible air navigation hazards, WRUT of West Rutland, VT has leased space on WCAX's tower on Boardman Hill in N. Clarendon, VT. The tower is adjacent to the originally proposed WRUT site less than 200 feet away. To the best of our knowledge the coordinates are the same and we hereby request permission to use said tower.

ATTACHMENT 4

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

0 6 1996

IN REPLY REFER TO:
1800B3-LLS

Mr. Brian Dodge
WRUT, Inc.
P.O. Box 69
Dover, NH 03821

In re: WRUT(FM), West Rutland, VT
Special Temporary Authority

Dear Mr. Dodge:

The staff currently has before it the February 27, 1996 request for special temporary authority ("STA") filed on behalf of WRUT, Inc ("WRUT").

Background. WRUT's construction permit (BPH-851209MK) was granted on June 13, 1988¹ and expired on December 13, 1989. On December 29, 1989, WRUT filed both an application to reinstate the expired permit of station WRUT(FM), West Rutland, Vermont and an application to modify the WRUT(FM) permit by changing the transmitter site, antenna height above average terrain, and effective radiated power. On December 11, 1991, the modification application was dismissed for failure to prosecute and, on April 13, 1993, the application to replace WRUT(FM)'s expired permit was denied, the underlying construction permit was cancelled and the call letters deleted. On May 12, 1993, WRUT filed a petition for reconsideration requesting that the Commission reinstate WRUT(FM)'s cancelled construction permit and grant the modification application. The petition for reconsideration is still pending before the Commission.

On May 5, 1995, WRUT filed an application for license to cover construction permit BPH-851209MK, as modified by permit BMPH-891229ID. A staff review of the license application revealed the existence of several discrepancies¹ and the staff, in an October 10, 1995 letter, advised WRUT that it did not qualify for automatic program test authority and

¹ The license application proposed (1) an antenna radiation center above ground level 28 meters lower than the WRUT construction permit authorized; (2) an antenna radiation center above mean sea level 28 meters below that authorized; (3) an antenna radiation center above average terrain 28 meters below that authorized; and (4) overall tower height above ground level 27 meters below that previously approved.

ordered WRUT to cease operations immediately.²

On February 27, 1996, WRUT filed the above-captioned STA requesting that the Commission allow WRUT to return to the air and operate with the facilities specified in the license application until the proposed tower was complete and WRUT could re-locate its antenna at the height specified in its construction permit. WRUT further maintains that construction of the new tower was planned for the fall of 1995 but was delayed because of several factors -- one of which was bad weather.

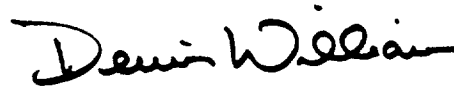
Discussion. Having given WRUT's request thorough consideration, we find that the grant of an STA, in this instance, is not warranted. Unanticipated impediments to construction -- such as bad weather -- which adversely affected WRUT's projected schedule of construction do not justify the grant of lesser facilities on an interim basis. Authorizing the premature operation of lesser temporary facilities undermines the Commission's policy objective of assuring the prompt institution of new and/or improved broadcast services to the public by diminishing the permittee's incentive to promptly construct the full facilities as authorized. In addition, it is our policy not to divert our limited staff resources to the issuance of STA's to permittees with unlicensed construction permits who wish to operate at lesser interim facilities. Under these circumstances, we find that WRUT's situation does not warrant special temporary authority.³

² At that time, the staff also advised WRUT that no further action on the license application would be taken until the noted defects had been corrected.

³ In addition, we point out that it is clear from both the license application and the STA request that WRUT has not constructed WRUT(FM) in accordance with the terms and conditions of its modified construction permit. Thus, we reiterate that, in this instance, the automatic program test authority provisions of 47 C.F.R. § 73.1620 do not apply and WRUT(FM) may not re-commence operations without prior Commission approval. Further, WRUT is warned that operation of WRUT(FM) at any height not in accordance with the terms and conditions of those authorized in construction permit BMPH-891229ID may result in the issuance of a Notice of Apparent Liability.

In light of the above, WRUT, Inc's February 27, 1996 request for Special Temporary Authority IS HEREBY DENIED pursuant to 47 C.F.R. § 0.283.⁴

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Williams". The signature is fluid and cursive, with the first name "Dennis" and last name "Williams" clearly distinguishable.

Dennis Williams
Assistant Chief
Audio Services Division
Mass Media Bureau

cc: Peter Sears

⁴ We also note that the Commission has not yet ruled on WRUT's pending petition for reconsideration of the cancellation of WRUT(FM)'s original construction permit and deletion of the WRUT(FM) call sign. In addition, we caution WRUT that, because of the pendency of its petition for reconsideration, any construction on WRUT(FM) is solely at the risk of WRUT and is subject to the outcome of the pending petition for reconsideration proceeding.